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TRANSMITTAL FORM

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Total Number of Pages in This Submission	10

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First Named Inventor	Srinivas Gutta
Art Unit	2616
Examiner Name	James A. Fletcher
Attorney Docket Number	US 010064

ENCLOSURES *(Check all that apply)*

- ☐ Fee Transmittal Form
  - ☐ Fee Attached
- ☐ Amendment/Reply
  - ☐ After Final
  - ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
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- ☐ Information Disclosure Statement
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- ☐ Reply to Missing Parts/ Incomplete Application
  - ☐ Reply to Missing Parts under 37 CFR 1.52 or 1.53
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- ☐ Appeal Communication to Board of Appeals and Interferences
- ☑ Appeal Communication to TC **(Appeal Notice, Brief, Reply Brief)**
- ☐ Proprietary Information
- ☐ Status Letter
- ☐ Other Enclosure(s) (please identify below):

Remarks

This communication contains a Reply Brief due on January 15, 2007 which was a Federal Holiday. This reply Brief is being submitted January 16, 2007, the first business day after the due date which was on a Federal Holiday. Therefore, no extension fee is required.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	LEIMBACH ASSOCIATES		
Signature	James D. Leimbach		
Printed name	James D. Leimbach		
Date	January 16, 2007	Reg. No.	34,374

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of	Group Art Unit: 2616
Srinivas Gutta, et al.	Examiner: James A. Fletcher
DYNAMIC KEY FRAME GENERATION USAGE	I hereby certify that this correspondence is being transmitted on this date via facsimile transmission to (571) 273-8300 and addressed to: Mail Stop Appeal Brief-Patent Commissioner for Patents P.O. Box 1450 Alexandria VA. 22313-1450
Serial No. 09/805,748	
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REPLY BRIEF UNDER 37 C.F.R. § 41.41

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Status of the Claims

The Examiner's Answer mailed November 15, 2006 states that the rejection to claims 3, 11-12, 33 and 41-42 under the provisions 35 U.S.C. §103(a) has been rescinded. The Examiner's Answer further states that the rejection of claims 3, 11-12, 33 and 41-42 under the provisions 35 U.S.C. §103(a) has been replaced by an objection as being dependent upon a rejected base claims but that these claims are otherwise allowable. The appellants thank the examiner for rescinding the rejection under the provisions 35 U.S.C. §103(a) to claims 3, 11-12, 33 and 41-42.

Grounds of Rejection to be Reviewed on Appeal

The Examiner's Answer dated November 15, 2006 states that the only rejection is that of claims 1, 2, 4-10, 14-17, 19-32, 34-40, 44-47 and 49-60 under the provisions of 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,473,095 issued in the name of Martino et al. (hereinafter referred to as *Martino et al.*) and U.S. Patent No. 6,137,544 issued in the name of Dimitrova et al. (hereinafter referred to as *Dimitrova et al.*). Appealed claims 3, 11-12, 33, and 41-42 are rejected under the provisions of 35 U.S.C. §103(a) as been obvious over *Martino et al.* in view of *Dimitrova et al.*

The rejection of appealed claims 1, 2, 4-10, 14-17, 19-32, 34-40, 44-47 and 49-60 under the provisions of 35 U.S.C. §102(e) as being anticipated via by *Martino et al.* and *Dimitrova et al.*

A. The rejection under 35 U.S.C. S 102(e)

Appealed claims 1, 2, 4-10, 14-17, 19-32, 34-40, 44-47 and 49-60 stand rejected under the provisions of 35 U.S.C. §102(e) as being anticipated by *Marino et al.* (U.S. Patent No. 6,473,095) and *Dimitrova et al.* (U.S. Patent No. 6,137,544). The rejection states that *Marino et al.* incorporates by reference the disclosure of *Dimitrova et*

al. and that these two references disclose every element defined by appealed claims 1, 2, 4-10, 14-17, 19-32, 34-40, 44-47 and 49-60.

The appellants, respectfully, direct the Board to the language of 35 U.S.C. §102(e) which states:

"35 U.S.C. 102 Conditions for patentability; novelty and loss of right to patent.

A person shall be entitled to a patent unless ...

(e) the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language".

The appellants, respectfully, assert that *Marino et al.* (U.S. Patent No. 6,473,095) issued as a patent on October 22, 2002. There was no prior publication of *Marino et al.* prior issuance. Therefore, *Marino et al.* can not be used as a reference in an anticipation rejection unless the examiner produces a publication of the contents of *Marino et al.* prior the invention of the present application for invention (e.g. the filing date of the present application for invention which is March 13, 2001). *Marino et al.* can only be used as a reference as of the date that it was issued as a patent, which is on October 22, 2002. Therefore, *Marino et al.* is not available as a reference under the provisions of 35 U.S.C. §102(e). The present application for invention was filed on March 13, 2001, well before *Marino et al.* was available as a reference.

The MPEP at §2131 states the present Patent Office policy for anticipation as a "claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The appellants, respectfully, point out that this rejection attempts to employ multiple

references. As stated above, *Marino et al.* can not be used as a reference in an anticipation rejection.

Appealed claims 1 and 31

The Examiner's Answer on page 11 addresses the appeal of claims 1 and 31. The Examiner's Answer alleges that col. 3, lines 39-42 of *Dimitrova et al.* disclose that the termination of extracting key frames is accomplished prior to the completion of executing of the video source frames. The appellants, respectfully, point to *Dimitrova et al.* at col. 3, lines 39-42 as stating "that if the recording is not completed at one time, a partially created video index can be saved ... for later additions." The appellants assert that this passage (see col. 3, lines 39-42) within *Dimitrova et al.* does not disclose or suggest a termination of the extracting of key frames prior to completion of executing of the video source frames. This passage simply states that if a tape of file is not completely recorded at one time, then a partially created video index can be saved. This passage would logically lead a person skilled in the art to believe that the video index for that entire single session can be stored for a tape or file that is not completely recorded in a single session. Therefore, any available video source frames for that session have been executed. There is no disclosure or suggestion within this passage for stopping the extracting of frames used to create the video index prior any available video source frames being executed. *Dimitrova et al.* does not disclose or suggest a termination of the extracting of key frames prior to completion of executing of the video source frames.

Appealed claims 2, 4, 5, 32, 34 and 35

The Examiner's Answer on page 11 addresses the appeal of claims 2, 4, 5 32, 34 and 25. The examiner asserts that *Dimitrova et al.* on col. 4, lines 35-38 discloses that first memory including a temporary or permanent memory. The appellants, respectfully, point out that the first memory is within the memory structure. There is no disclosure or suggestion within *Dimitrova et al.* for a first memory within a memory structure. Therefore, there is no disclosure or suggestion within *Dimitrova et al.* for storing

the extracted key frames in a first memory of the memory structure, independent of whether that the first memory is a temporary or permanent memory.

Appealed claims 6 and 36

Appealed claims 6 and 36 define subject matter for recording in the first memory an indication of a video source frame being executed when the extraction of key frames is terminated. The Examiner's Answer on page 12 addresses recording in the first memory and makes a cursory statement that recording in the first memory an indication of a video source frame being executed when the terminating occurred is a broad recitation. The appellants assert that the term recording in the first memory an indication of a video source frame being executed when the terminating occurred is a specific recitation and not a broad recitation. The allegation in the Examiner's Answer that Transfer Data Structure to Tape As Visual Index 107 as shown in Figure 1 of *Dimitrova et al.* discloses recording in the first memory and makes a cursory statement that recording in the first memory an indication of a video source frame being executed when the terminating occurred as defined by appealed claims 6 and 36 is without merit. The appellants, respectfully, point out that that appealed claims 6 and 36 define subject matter for recording in the first memory an indication of a video source frame being executed when the extraction of key frames is terminated. The rejection and the Examiner's Answer do not address the subject matter of appealed claims 6 and 36. The subject matter for an indication of a video source frame being executed when the extraction of key frames is terminated being recorded is, simply put, not addressed. There is no disclosure or suggestion within *Dimitrova et al.* for recording in the first memory an indication of a video source frame being executed when the extraction of key frames is terminated.

Appealed claims 7 and 37

The examiner's Answer points to a misspelling of *Martino et al.* The appellants, respectfully, apologize for this misspelling. Appealed claims 7 and 37 define subject matter for recording in the first memory comprises generating a special key frame that includes the indication of the video source frame being executed when the extraction

of key frames is terminated, and further comprising appending the special key frame to the extracted key frames in the first memory. The Examiner's Answer alleges that a program boundary discloses the subject matter of appealed claims 7 and 37. The Examiner's Answer simply recites the subject matter of appealed claims 7 and 37 and makes a cursory statement that it is disclosed by the program boundary. The appellants assert that this allegation is without merit. There is no disclosure or suggestion within *Dimitrova et al.* or *Marino et al.* for the first memory comprises generating a special key frame that includes the indication of the video source frame being executed when the extraction of key frames is terminated, and further comprising appending the special key frame to the extracted key frames in the first memory.

Appealed claims 9 and 39

Appealed claims 9 and 39 define subject matter for the terminating being triggered by action of a user of the VPS, wherein the action includes a manipulating by the user of a user input device. The Examiner's Answer alleges that the statement within *Dimitrova et al.* on col. 2, lines 42-44 that reads for "a file, the selected area for the visual index any occur anywhere in the file, and may be reserved by a system automatically or manually selected by the user" teaches the terminating being triggered by action of a user of the VPS, wherein the action includes a manipulating by the user of a user input device. The appellants disagree. There is no disclosure or suggestion within *Dimitrova et al.* or *Marino et al.* for the terminating being triggered by action of a user of the VPS, wherein the action includes a manipulating by the user of a user input device.

Appealed claims 10 and 40

Appealed claims 10, 40 define subject matter for terminating the extracting at a time when a predetermined condition has occurred. The Examiner's Answer does nothing to further add to the previous position of the examiner. This previous position was that the statement on col. 3, lines 40-43 of *Dimitrova et al.* that "if the tape, or file, is not completely recorded on at one time, a partially created video index could be saved on the tape, file, etc. or could be saved in a tape memory for later additions" disclose terminating

the processing of the video source frames when a predetermined condition has occurred. The appellants, respectfully, assert that this assertion contained in the rejection does not address the predetermined condition. Appealed claims 10 and 40 define subject matter for a predetermined condition for terminating the extraction of key frames prior to completion of executing the video source frames. There is no disclosure or suggestion within *Dimitrova et al.* for terminating the extracting at a time when a predetermined condition has occurred.

Appealed claims 14 and 44

Appealed claims 14 and 44 define subject matter for reviewing the key frames by a user of the VPS, wherein the reviewing occurs through an output display that is coupled to the processor. The cited section of *Dimitrova et al.* makes is no disclosure or suggestion for reviewing the key frames by a user of the VPS, wherein the reviewing occurs through an output display that is coupled to the processor.

Appealed claims 16-18 and 46-48

Appealed claims 16-18 and 46-48 define subject matter for reviewing the key frames by a user of the VPS, wherein the reviewing occurs prior to completion of executing the video source frames, or wherein the reviewing occurs at or after the terminating, or wherein the reviewing occurs prior to the terminating. *Dimitrova et al.* and *Marino et al.* do not address the subject matter for reviewing the key frames by a user of the VPS, wherein the reviewing occurs in relation to the completion of executing the video source frames.

Appealed claims 19 and 49

Appealed claims 19and 49 define subject matter for reviewing the key frames by a user of the VPS, wherein the reviewing occurs at or after completion of executing the video source frames. *Dimitrova et al.* and *Marino et al.* do not address the subject matter for reviewing the key frames by a user of the VPS, wherein the reviewing occurs in relation to the completion of executing the video source frames. Therefore, there

is no disclosure or suggestion within *Dimitrova et al.* or *Marino et al.* for reviewing the key frames by a user of the VPS, wherein the reviewing occurs at or after completion of executing the video source frames.

Appealed claims 20 and 50

Appealed claims 20 and 50 define subject matter for reviewing the key frames by a user of the VPS, wherein at or after completion of the reviewing, erasing the key frames from the first memory. The rejection alleges that the foregoing subject matter is disclosed by *Dimitrova et al.* on col. 10, lines 38-40. The appellants, respectfully, point out that *Dimitrova et al.* on col. 10, lines 38-40 discuss the block signature 700 being obtained and used to filter image and frames from the visual index. There is no disclosure or suggestion within *Dimitrova et al.* for reviewing the key frames by a user of the VPS, wherein at or after completion of the reviewing, erasing the key frames from the first memory.

Appealed claims 23, 24, 53 and 54

Appealed claims 23, 24, 53 and 54 define subject matter for reviewing the key frames by a user of the VPS, wherein the erasing occurs at a time when a predetermined condition has occurred and the predetermined condition includes completion of the executing of the video source frames. The Examiner's Answer states that *Dimitrova et al.* at col. 9, lines56-59 teach the removal or erasure of keys frames from the first memory upon the completion of the executing of the video source frames. The appellants, initially point out that there is no functional equivalent of the first memory within *Dimitrova et al.* The appellants, further point out that *Dimitrova et al.* at col. 9, lines56-59 simply states that a keyframe filtering method is used to reduce the number of frames. There is no disclosure or suggestion within *Dimitrova et al.* or *Marino et al.* for reviewing the key frames by a user of the VPS, wherein the erasing occurs at a time when a predetermined condition has occurred and the predetermined condition includes completion of the executing of the video source frames.

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Appealed claims 21, 22, 25, 26, 27, 28, 29, 30, 51, 52, 66, 56, 57, 58, 59 or 60

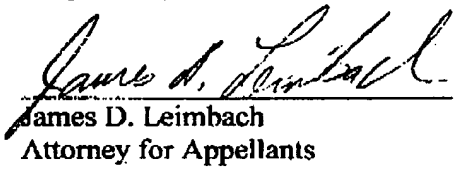
The appellants, respectfully, point out that the Examiner's Answer does not address the arguments presented in the appellants' Appeal Brief for claims 21, 22, 25, 26, 27, 28, 29, 30, 51, 52, 66, 56, 57, 58, 59 or 60 except for repeating the arguments presented in the Final Office Action. Accordingly, reversal of the rejection to these claims is respectfully, requested.

Conclusion

In summary, the examiner's rejections of the claims are believed to be in error for the reasons explained above. The rejections of each of claims 1, 2, 4-10, 14-17, 19-32, 34-40, 44-47 and 49-60 should be reversed.

The Commissioner is hereby authorized to charge any fees associated with the filing of this appeal brief to Account No. 50-3745, including extension fees.

Respectfully submitted,



James D. Leimbach
Attorney for Appellants
Registration No. 34,374

Telephone: (858) 731-9570
Facsimile: (858) 731-9570